ESMA_QA_1070

Submission Date
12/06/2023

Status: Answer Published

Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
Cross-border distribution of funds

Additional Legal Reference
Article 30a(1) of Directive 2011/61/EU

Subject Matter
Pre-marketing by registered AIFMs

Question
Are registered AIFMs referred to in Article 3(2) of the AIFMD, which do not qualify as EuSEF manager or EuVECA manager, subject to the obligation to notify pre-marketing pursuant to Article 30a(1) of the AIFMD?

ESMA Answer

13-06-2023

Original language

[ESMA34-32-352, Section II, Q&A 10]

No, unless it is required otherwise under national rules. Article 30a AIFMD applies to the authorised EU AIFMs. Sub-threshold EU AIFMs covered by Article 3(2) AIFMD, which have not opted in under Article 3(4) AIFMD, are referred to as registered AIFMs in AIFMD, which do not have the EU-wide AIFM passport to exert asset management activities across the borders. Except for Article 3(3) and (4) and Article 46 AIFMD activities of sub-threshold EU AIFMs are governed by the national rules, including those on pre-marketing.

The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.